

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

NORMAN LAMKIN	§	
TDCJ-CID #1564433	§	
v.	§	C.A. NO. V-12-020
	§	
RICK THALER	§	

OPINION DENYING MOTION FOR AN EVIDENTIARY HEARING

Petitioner is an inmate in the Texas Department of Criminal Justice, Correctional Institutions Division, and is currently incarcerated at the Stevenson Unit in Cuero, Texas. Proceeding pro se, he filed a habeas petition pursuant to 28 U.S.C. § 2254 challenging a state conviction. (D.E. 1). Pending is petitioner's motion for an evidentiary hearing regarding facts that he alleges are in dispute. (D.E. 4).


Rule 8(a) of the Rules Governing Section 2254 Cases states that "[i]f the petition is not dismissed, the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted." Rule 8(c) further requires that "[t]he judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare." The Fifth Circuit has explained that "[a] hearing in a habeas proceeding is required only when, *inter alia*, the record reveals a genuine factual dispute." Tague v. Puckett, 874 F.2d 1013, 1015 (5th Cir. 1989) (emphasis added); see also Murphy v. Johnson, 205 F.3d 809, 815-16 (5th Cir. 2000) (discussing the basis for an evidentiary hearing).

Petitioner is challenging his conviction by the 266th Judicial District Court in Erath County, Texas for which he received a forty-year sentence. (D.E. 1, at 2). In the pending motion, he argues for an evidentiary hearing to address six specific factual issues that he alleges

are in dispute. (D.E. 4). An order for service of process has not yet been issued so respondent has not yet filed an answer. If an evidentiary hearing is determined to be necessary, then one will be set.

Accordingly, it is ORDERED that petitioner's motion for an evidentiary hearing, (D.E. 4), be DENIED without prejudice.

ORDERED this 23rd day of April 2012.


BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE